

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
CASE NO.: 1:21-CV-00067

DMARCIAN, INC.,

Plaintiff,

v.

DMARC ADVISOR BV,  
f/k/a dmarcian Europe BV,

Defendant.

**PLAINTIFF'S BRIEF IN  
RESPONSE TO  
NOVEMBER 21, 2024 ORDER  
CONCERNING HAGUE LETTERS**

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Plaintiff dmarcian Inc. submits this brief in response to the Court's November 21, 2024 Order directing the parties to "file briefs addressing the issues raised in the District Court of North Holland's letter." (ECF No. 392).

Prior to the expiration of the discovery period, on November 6, 2023, Plaintiff issued a Motion for Issuance of Letters of Request under the Hague Convention as to witness Hub Harmeling after receiving no response from Mr. Harmeling regarding acceptance of service of a subpoena. (Doc. 273). On November 7, 2024, Plaintiff issued a Motion for Issuance of Letters of Request as to witness Herwert Kalkman. (Doc. 274). On November 20,

2023, Defendant confirmed it took no position as to these motions. (Doc. 276).

On April 19, 2024, the Court issued the Letters of Request as to both witnesses. (Doc. 350, 351). The Central Authority in the Netherlands confirmed receipt on May 16, 2024. (Doc. 371). On June 17, 2024, the Central Authority requested supplemental information regarding the Letters issued to Mr. Kalkman to be remitted by July 30, 2024. (Doc. 375-4). The additional information was remitted on July 26, 2024. (Doc. 380-382). The Hague Court determined to hold Mr. Harmeling's request in abeyance until receipt of the information relating to Mr. Kalkman. (Doc. 393, ¶1.3). This Court further ordered that translated copies of the Letters be remitted, and a translated copy was filed on June 28, 2024. (Doc. 375 & 375.1-5).

On October 4, 2024, the District Court of the Hague issued a decision concerning Plaintiff's Letters of Request to depose Herwert Kalkman and Hub Harmeling (both of whom are citizens of the Netherlands) through the procedures outlined in the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (the "Evidence Convention"). (ECF No. 393). The Hague Court's decision acknowledged receipt of the requests on September 18, 2024, and further determined that the Plaintiff's request to depose Mr. Kalkman and Mr. Harmeling complied with the formal

provisions of the Evidence Convention and that the Hague Court was forwarding the request relating to Mr. Kalkman to the North Holland District Court for further execution.

Throughout the process, Plaintiff's Dutch Counsel has been in communication with the Dutch courts regarding the Letters of Request. Neither Plaintiff nor Plaintiff's Dutch counsel has received any update from either the Hague Court or the North Holland District Court on its further execution of Plaintiff's Letters of Request.

The Court properly issued the Letters which, despite the delays inherent in the process, are an appropriate tool to obtain discovery from foreign non-parties who will not voluntarily submit to discovery and are not otherwise subject to the jurisdiction of the Court. *Eli Lilly & Co. v. Teva Parenteral Medicines, Inc.*, No. 1:10-CV-1376-TWP-DKL, 2013 WL 12291616, at \*4 (S.D. Ind. Apr. 26, 2013). This case is set for trial during the March 10, 2025 trial term, and Plaintiff is eager to proceed with trial. Plaintiff intends to proceed expeditiously to schedule the depositions of Mr. Kalkman and Mr. Harmeling once it receives word that the Dutch Court has executed the necessary documentation for Plaintiff to proceed. Plaintiff does not anticipate its Letters of Request posing any issues for trial scheduling.

This the 29th day of November, 2024.

/s/ Pamela S. Duffy

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## AI CERTIFICATION

No artificial intelligence was employed in doing the research for the preparation of this document, with the exception of such artificial intelligence embedded in the standard on-line legal research sources Westlaw, Lexis, FastCase, and Bloomberg.

Every statement and every citation to an authority contained in this document has been checked by an attorney in this case and/or paralegal working at his/her direction as to the accuracy of the proposition for which it is offered, and the citation to authority provided.

This the 29th day of November, 2024.

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## CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served upon counsel for all other parties to this action listed below by efileing a copy of the same utilizing the Western District of North Carolina's efileing system:

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